

UNITED STATES OF AMERICA.

Massachusetts District, ss.

To

Pela Marsh, Nathaniel Capen,
Gardner P. Lyon, Thomas M.
Webb and, Charles W. Upham

GREETING.

FOR CERTAIN CAUSES offered before the Circuit Court of the United States of America, for the first Circuit, within and for the Massachusetts District, as a Court of Chancery, We COMMAND AND STRICTLY ENJOIN YOU, laying all other matters aside, and notwithstanding any excuse, that you personally be and appear before our said Circuit Court, at the Rules, to be holden at the Office of the Clerk of our said Court, in Boston in said District, on the first Monday, being the *Seventh* day of *September* next, to answer concerning those things, which shall then and there be objected against you by

Charles Folson, Thomas G. Wells, Lyman Thurston, and Jared Sparks, all of Cambridge in the County of Middlesex and District of Massachusetts, for an alleged infringement of the Copyright of a work entitled "The Writings of George Washington, being his Correspondence and addresses, messages and other papers, official and private selected and published from the original manuscripts with a life of the author, notes and illustrations by Jared Sparks" as is more particularly set forth in their Bill of Complaint this day filed in the District Clerk's Office

and to do further and receive that which our said Circuit Court shall consider in this behalf. And this you are in no wise to omit, under the penalty of *Five hundred* dollars
And have you there this writ.

Witness the Honorable

Roger P. Taney at Boston,
this *Eight* day of *August* A. D. 1840, in
the *Sixty fifth* year of the Independence of the United States of America.

Francis Bassett Clerk.

United States of America }
 Massachusetts Dist. Ct. } Boston August 11 1840

Pursuant herunto I
 have notified the within named Marsh. Capen,
 Webb, by giving to each in hand a true and
 attested Copy of this Subpoena to appear
 as directed. Also, same day, notified the
 within named Lyon to appear as directed
 by giving in hand to the within named
 Webb, his partner in business, ^{for said Lyon} a like copy
 of this Subpoena; he said Lyon residing
 in the State of New Hampshire, without my
 process. Also, same day, notified the
 within named Upham to appear as within or-
 dered, by leaving at his usual place of abode
 a like copy of this Subpoena. U. S.
 Henry Harris Deputy
 Marshal.

5 For: \$10.00
 5 C. p. d. 5.00
 5 L. and C. 1.50
 \$16.50

805.
 53
 J. Marshall
 Subpoena
 in Equity.

Decree

District of Massachusetts

Circuit Court of U.S. Oct. T.

1841

Charles Folsom & others

Bela Marsh & others

This cause came on to be heard at this term upon the Bill & Answer, and the Master's Report & was argued by counsel, on consideration whereof it is ordered adjudged and decreed that the Master's Report be, & the same hereby is approved and confirmed, & thereupon it is further ordered, adjudged & decreed by the court that said defendants be and they hereby are severally and perpetually restrained & enjoined from printing, publishing, selling or exposing to sale or causing or being in any way concerned in the printing, publishing selling or exposing to sale of any copy or copies of the

whole or any part of the three hundred & fifty three pages copied, as reported by the Master in said Life of Washington ~~was~~ ^{is} mentioned in the bill and answer, published by the defendants, from the Life & Writings of Washington mentioned in the Bill and answer, published by the plaintiffs; and that the plaintiffs recover their costs against the defendants; The plaintiffs ^{waiving} the account prayed for in the bill, the court does not order such account.

By the Court
Francis Bantick, Clerk

CCUS.

Mass District

May Term 1841

Folsom et al v Bela Marsh et al
in Equity

These repliants saving & reserving to themselves
all & all manner of advantage of exception
which may be had & taken to the main
fold errors, uncertainties & insufficiency
of the answer of the Said Defs for replica-
tion thereunto, Say, that they do & will
^{over} maintain & prove their Said bill to be
true, certain & sufficient in the law to be
answered unto by the Said Defs, &
that the answer is very uncertain, va-
rize & insufficient, in the law to be replied
unto by these repliants without that, that
any other matter or thing in the said answer
contained, material or effectual in the law to be
replied ^{unto} to, & herein, & hereby, well & sufficiently
replied unto, confessed or avoided, traversed or
denied, is true; all which matters & things these
repliants are ready to over, maintain & prove,
as this honorable Court shall direct, & humbly
pray, as in & by their said bill they have already
prayed. By their Solicitors
Phillips & Robbins

in
Fuchsanthel by Pörschke

Dehlicatiori

T. phaeobron.

Sept. 9. 1845

UNITED STATES OF AMERICA.

DEPARTMENT



OF STATE.

To all to whom these presents shall come, Greeting:

I Certify, That *the paper hereunto annexed is a true copy of a document on file in this Department.*

In Testimony Whereof, I *Daniel Webster*

SECRETARY OF STATE of the United States, have hereunto subscribed my name, and caused the Seal of the Department of State to be affixed.

Done at the City of Washington, this *seventh*
day of *August* A. D. 18*46*
and of the Independence of the United States of America the
sixty sixth.

Daniel Webster



DEPARTMENT
OF STATE

To all to whom these presents shall come, greeting:

Know all men, that I, the President of the United States of America, do hereby certify that the following is a true and correct copy of the original of the same, as the same appears from the records of the Department of State:

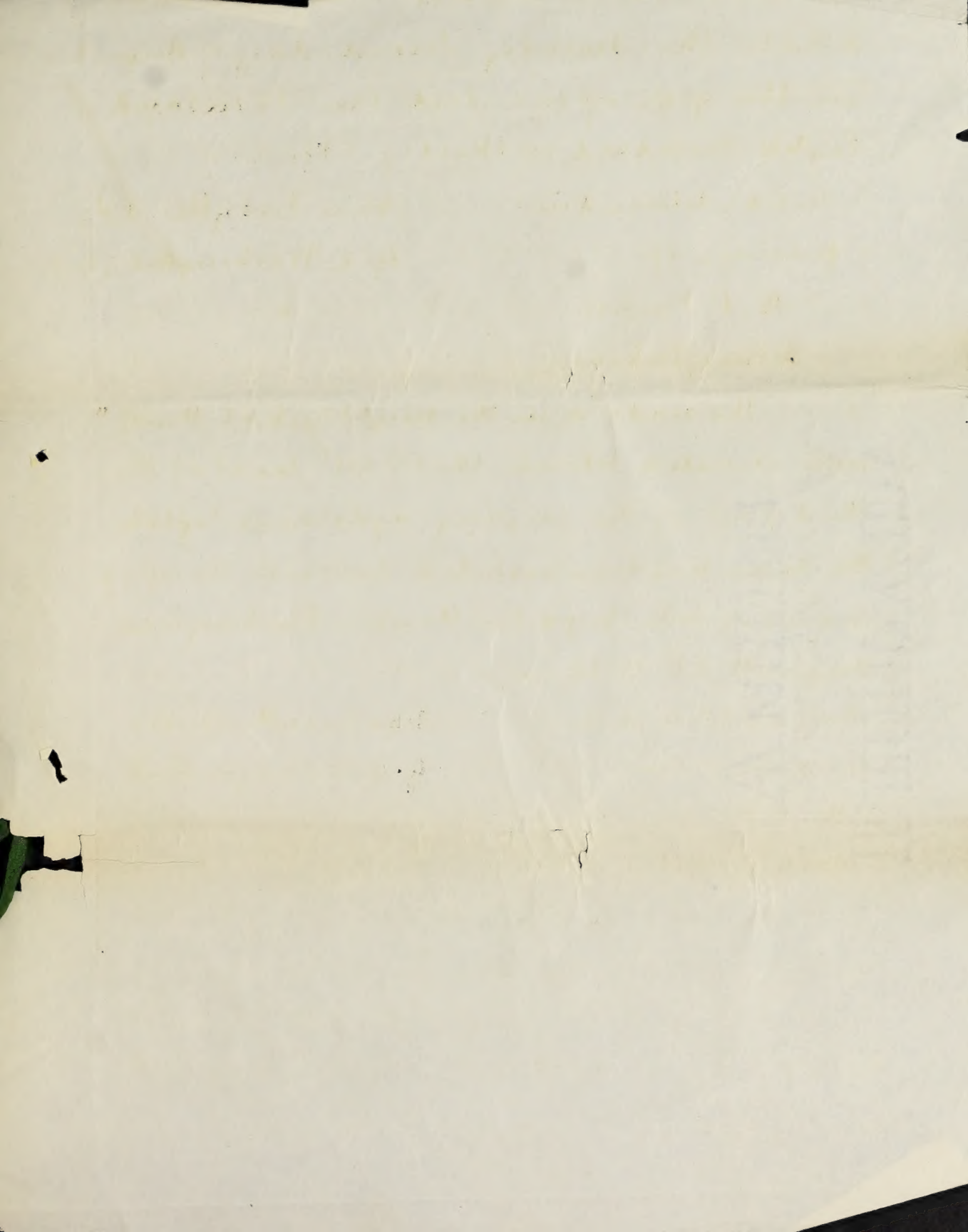
IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of the Department of State, at the City of Washington, this

thirteenth day of January, A.D. 1901.

W. H. S. 18

Witness my hand and the seal of the Department of State, at the City of Washington, this

thirteenth day of January, A.D. 1901.



Master Report

October 2. 1841, Filed
in Court.

A. Geo. S. Hileard

[Copy.]

Articles of agreement entered into this seventh day of March in the year eighteen hundred and twenty seven between Jared Sparks of the state of Massachusetts of the first part, and John Marshall of the city of Richmond and Bushrod Washington of Mount Vernon, both of the state of Virginia Witnesses, that whereas the party of the first part proposes to prepare for publication and to publish an edition of the works of General Washington according to a plan proposed by the party of the first part in a letter from him bearing dated the 26th day of January in the year eighteen hundred and twenty six addressed to the said Bushrod Washington one of the parties of the second part, which work the said party of the first part now engages to execute according to the plan proposed in the said letter (reference whereto is here made as part of these articles) the said party of the first part taking upon himself the charge and responsibility of the literary part of said work and the business of finding a publisher and of superintending the publication, it is hereby covenanted and agreed by and between the aforesaid parties in manner and form following that is to say -

First, the said party of the first part covenants and agrees in consideration of having access to all the papers in possession of the said Bushrod Washington which were devised to him by his uncle the said General Washington and permission to take copies or extracts from the same subject to the qualification hereafter mentioned, to prepare for publication and to publish an edition of General Washington's works according to the plan proposed by the said party of the first part in the letter before mentioned (which letter is now distinguished by the names of the parties to this agreement being

(endorsed thereon) and to execute the said work according to the said plan, and to take upon himself the charge and responsibility of the literary part of the said work and the business of finding a publisher and of superintending the publication thereof and to secure the copy right thereof

Second - The said Bushrod Washington covenants and agrees that the said party of the first part shall have free access to the said papers of the said General Washington at Mount Vernon with full permission to examine, and to take copies or extracts of the same at Mount Vernon but not to remove the said papers or any or either of them to any other place without the leave of the said Bushrod Washington first obtained in writing or in case of his death of the person to whom or to whose care they shall and may be committed by the said Bushrod Washington by his will or otherwise, it being fully understood and agreed by the parties to this agreement that any paper may be withheld which the parties of the second part, both or either of them do not deem suited or proper for publication, and the parties of the second part further covenant and agree to deliver to the party of the first with a view to facilitate his labours the copies of letters from and to the said General Washington which they have caused to be made, free of any charge -

Third The said Jared Sparks on his part covenants and agrees that the parties of the second shall be equally interested with himself in the property of the copy right or copy rights to the said work and in the profits of the sales, after the expenses of the said Sparks, the said party of the first part, which have been

or shall hereafter be incurred in procuring materials for the historical illustrations of the said work shall be deducted from the said profits of the sales - that is to say, the said party of the first part is to be entitled to a moiety of the property in the said Copyright or Copyrights and to a moiety of the profits of sales of the said work after the said deduction is made, and the said parties of the second part to the other moiety of said Copyright or Copyrights, and of the said profits of sales after the said deduction is made. As witness our hands and seals the day and year first above written

Signed sealed and delivered [Signed] Bush. Washington [and a seal.]
in presence of [Signed] J. Marshall [and a seal.]
[Signed] L. Osborne. [Signed] Jared Sparks [and a seal.]

[Endorsed, in the handwriting of Mr. Sparks.]

This Instrument was signed and sealed in the city of Washington, March 7th 1827.

Whereas an Act was passed at the last Session of Congress, whereby the sum of Twenty Five Thousand Dollars was appropriated, "to enable the Secretary of State to purchase the manuscript papers and a portion of the printed books of General George Washington; the said papers & books to be deposited & preserved in the Department of State; under the regulations the Secretary may prescribe" - Now, in order to carry into effect the design of the said Act, & by virtue of the authority therein contained, it is stipulated & agreed by & between John Forsyth in his official capacity as Secretary of State of the United States of the one part, & George C. Washington of Georgetown in the District of Columbia of the other part, as follows viz -

The said George C. Washington agrees to sell & deliver to the said Secretary of State, for the use of the United States, all the papers of the late General George Washington of which he the said George C. Washington is proprietor, including those mentioned in the lists

a inventories furnished from time to time to the Department of State as being in his own possession, & those which are in the possession of any other person or persons, more especially those which are in the hands of the Reverend Jared Sparks; together with the printed books referred to in a letter addressed by the said George C. Washington to the Secretary of State on the Third day of January Eighteen Hundred & Thirty Four: the whole of the said papers & books to be delivered forthwith at the Department of State at the expense of the said George C. Washington, except those in the possession of the said Jared Sparks, which shall be delivered without delay to the order of the Secretary of State, who agrees to permit them to remain in the City of Boston or in the neighbourhood thereof until the close of the next session of Congress, & in the mean time to allow the said Jared Sparks to have convenient access to them for the purposes of a literary work in which he is engaged. It is understood & agreed, however, that the expense of transporting the said

papers

papers from Boston to the Department of State, whenever such transportation may take place, is to be defrayed by the said George C. Washington. -

And the said George C. Washington further agrees that he will, at his own expense, continue the present insurance upon the said papers in the possession of the said Jared Sparks, for the space of one year; & will, at the time of the delivery of the said last mentioned papers to the order of the Secretary of State as herein before provided for, assign & deliver the policy of Insurance to the said Secretary of State for the use of the United States. -

And the said Secretary of State agrees on his part to pay or cause to be paid to the said George C. Washington, at the time of the delivery of that portion of the said papers & books which is herein above stipulated to be delivered forthwith at the Department of State, the sum of Twenty Thousand Dollars; & the further sum of Five Thousand Dollars, when such of the said papers as are now in the possession of the said Jared Sparks shall

shall be actually received at the said Department, or at such other time as Congress may by act or resolution direct.

In witness whereof the said parties have hereunto set their hands & seals, the Twenty Second day of August in the year of our Lord One Thousand Eight Hundred & Thirty Four -

sealed & delivered in

John Forsythe. (Seal)

presence of -

G. C. Washington. (Seal)

A. O. Dayton.

Asbury Dickinson.

The words "or in the neighbourhood thereof" were inserted between the 9th & 10th lines of the third page of the foregoing agreement after the same had been executed but with the express consent of both the parties thereto - Washington August 22. 1834. -

sealed & delivered in

John Forsythe. (Seal)

presence of -

G. C. Washington. (Seal)

A. O. Dayton.

Asbury Dickinson.

Circuit Court of United States
~~Circuit Ct. S. D. N.Y.~~
Mass Dis. P. May Term 1841

Charles Fulton ^{vs} in Eq. vs Bela Marsh and

May 21. 1841.
Ordered that this case be referred
to George S. Willard Esq. Master
in Chancery, to examine & report
the coincidences of the Defts' work
with that of the plffs, & in what
parts & to what extent the same
is identical with that of the plffs
how far the author of the work
complained of has in making the
same used the plffs' work - and
how far he has made use of
the same authorities, & resorted to
the same sources independent
of any use or with how great a
use of the plffs' work, and to
state the evidence produced before him
in the case as far as either party
may request, & to report thereon
by the Court
Lewis Bennett, Clerk

Fuchus et d in G. 17 March 18

Order to G. L. Hillen
Master in Chemistry -

May 21st - 1845

Fulham at 11 48 blank side

Answer

Nov 9th - 1840 -
Filed in the Clerk's
Office -

~~Attest Nov. 9th 1840~~

Answer

The answer of Bela Marsh, Samuel Capen, Gardner P. Lyon, and Thomas G. Webb and Charles W. Upham, Defendants to the Bill of Complaint of Charles Folsom, Thomas G. Wells and Lyman Marston and Jared Sparks - in the Circuit Court of the United States of America, holden at Boston within and for the District of Massachusetts.

The said defendants, not confessing or acknowledging all or any of the matters or things, in the complainant's said bill alleged and set forth to be true in such manner and form as the same are ~~set~~ therein set forth, and saving and reserving to themselves now and at all times hereafter, all, and all manner of benefit and advantage of exception, that can or may be had or taken to the many errors, uncertainties and insufficiencies in the said bill of complaint, contained for answer thereto, or unto so much thereof as these defendants are advised, it is in any wise material or necessary for them to make answer

verto, answering, say: -

That they have been informed, and believe it to be true, that the said complainants are the publishers of a work, entitled "The writings of George Washington; being his correspondence, addresses, messages, and other papers, official and private, - selected and published from the original manuscripts - with a life of the Author, notes and illustrations - by Jared Sparks" - consisting of twelve volumes.

And these defendants further say, that they are informed and believe it to be true, that the said Jared Sparks is the author and compiler of the aforesaid twelve volumes; but that the writings of George Washington, being his correspondence, addresses, messages and other papers, official and private, which constitute eleven out of the twelve volumes aforesaid, are not in themselves, the property of the said Jared Sparks.

And these defendants further say that they totally deny that the said Jared Sparks has, or has heretofore had, any copy-right whereby he was entitled to have the exclusive publication of the said writings, correspondence, addresses, messages, and other papers.

And the defendants further say that on the fifth day of August in the year of our Lord eighteen hundred and forty and at divers times before and since the said fifth day of August without the allowance or consent of the said complainants, or either of them, they the said defendants published and exposed to sale, and sold

copies of a work in two volumes, entitled the life of Washington, in the form of an autobiography, the narrative being to a great extent conducted by himself, in extracts and selections from his own writings, with portraits and other engravings.

And the said defendants further say that the life of Washington aforesaid, is not

a copy from, nor an infringement, nor a piracy of, the said writings of George Washington, with a life of the Author, published as aforesaid by the said Complainants.

And the defendants further say, that they deny that any part of the said life of Washington is copied verbatim et literatim, from any portion of the said writings of George Washington, in which said portion, the said Jared Sparks, and his assigns, have the exclusive right and privilege to print, publish, expose to sale and sell the same. But the said defendants aver that they have made such use as they lawfully might do, of the writings, correspondence, messages, addresses, and other papers, originally composed by George Washington, in the composition of the said life of Washington, published by them, and composed by the said Charles W. Upham. And that they have copied many ~~pages~~ pages of the said writings, correspondence, messages, addresses, and other papers, from the original manuscripts of the same, and from printed works, which had

been printed and published before the publication of the writings of George Washington in the twelve volumes aforesaid - and that they have made such use of the said original materials, in the composition of their life of Washington aforesaid, as they might do in the composition of a literary work, entirely distinct from, and independent of, the said writings of Washington, in twelve volumes, both in its object, nature and style of execution - and they aver that the said life of Washington is in its nature, object and style of execution, an entirely distinct and independent work from the writings of George Washington aforesaid. And they further aver, that they have made no other use of the said writings of Washington, or of any matter contained in them or in any part of them, than they lawfully might do in the composition of such an entirely different, distinct, and independent work.

And the defendants further aver that the said life of Washington, by them published,

is not a piratical work; and that no part of the same is an infringement upon any copy-right, now or heretofore belonging to the said Jared Sparks, in the said writings of George Washington in twelve volumes.

And these defendants further say that they have printed & published copies of the said life of Washington in two volumes aforesaid, and that they have now on hand & in their possession copies of the said work.

By their Solicitors
 Pantoul & Kimball
 (—D—)

To the Honorable Justices of
the Circuit Court of the United States
of America, holden at Boston
within & for the District of Massa-
chusetts

The bill of complaint of
Charles Holson, Thomas G. Wells ~~and~~
Lyman Thurstow & Jared Sparks
against Bela Marsh, Nathan Capen,
Gardner P. Lyon & Thomas H. Webb
and Charles W. Updham.

Respectfully show your orators
Charles Holson, Thomas G. Wells and
Lyman Thurstow, Printers & Publishers
& Copartners doing business under
the name & style of Holson, Wells &
Thurstow, & Jared Sparks, Gentlemen,
all of Cambridge, in the County of
Middlesex in said district of Massachu-
setts, & all being citizens of the United
States - that the said Sparks is, & heretofore
at the time ~~at the~~ of the infringement
herein afterwards mentioned, was, proprietor
of the copy right of a work, of which the

Said Sparks is the author & Compiler,
~~the~~ ^{work} entitled "The Writings of George Washing-
ton. being his correspondence, addresses
messages & other papers, official & private,
selected & published from the original
manuscripts, with a life of the author,
notes & illustrations by Jared Sparks"
Consisting of twelve volumes, of all
which volumes respectively the copyrights,
was taken out by said Sparks previous
to the publication thereof respectively, &
secured according to law, the said Sparks,
~~being~~ at the time of taking out & securing
said copyrights respectively & then being
a citizen of the United States, & the term
of each said of which copyrights had
still more than eight years run; and
that said Holson, Wells & Thurston
before the infringement, herein after
complained of had by an agreement
with said Sparks undertaken & become
interested in, & assumed a part of the
risk & responsibility of the publication of
said work, & have ever since continued
& still continue to be thus interested,
and that ever since the first publica-
tion of the several volumes of said work,
the public have been supplied with

copies of the Same by Said Sparks & the
publishers of the Same at reasonable
prices; and that Said Sparks & Said
Holcomb, Wells & Thurston have incurred
very large expenses upon Said publica-
tion, & have been & are in the receipt of
large amounts, the proceeds of the
Sale of Said work to reimburse their
expenses & remunerate their labor
& care bestowed on the Same - And
And your orators further show
that they your orators being in the
receipt of large sums the proceeds of
the Sale of Said work as aforesaid,
under Said copyrights, Bela Marsh-
Nahum Capen, & Thomas H. Webb, all
of Boston in the County of Suffolk in
Said district of Massachusetts, and
Gardner P. Lyon, of Concord in the
County of Merrimack in the District of
~~Massachusetts~~ New Hampshire, Booksellers being
copartners under the name, Style & firm
of ~~the~~ Marsh, Capen, Lyon, & Webb, and
also Charles W. Upham, of Salem in
the County of Essex in Said District
of Massachusetts, Clerk, all of them
well knowing that Said Sparks held

such Copyrights, & Said Holson, Wells
& Thurston were interested in the Said
publication, & deliberately after due
notice, intending to infringe Said
Copyrights at Said Boston, on
the fifth day of August in the year
of our Lord eighteen hundred & forty
delivered lines before & since the Said
fifth day of August without the allow-
ance or consent of your orators, or
either of them, published & exposed to
sale, & sold a work in two volumes
entitled "The Life of Washington in the
form of an Autobiography - The narrative
being to a great extent conducted by himself, in
extracts from his own writings with
portraits & other engravings
consisting of ^{pages} in the whole, which they still continue
to expose to sale; having had due
notice & well knowing that the same
is a copy from, & an infringement &
piracy of, Said ^{Several} Writings of George
Washington with a life of the author
so published by your orators as afore-
said,

and your orators aver that three
hundred & eighty-eight pages of
Said piratical work are copied,

verbatim & literal from the said work
so edited & compiled by said Sparks as aforesaid
& so published by your orators ^{as aforesaid} consisting
of matter which was published originally
by said Sparks under his said copy-
right, & which had never before been
published or printed; & which he, the said
Sparks, & his assigns, had the exclusive
right & privilege to print, publish & sell
& expose to sale - and that many other
parts of said piratical work

published by said parties complained
of, besides said three hundred & eighty
eight pages, are infringements upon
said Sparks's said copyrights; where-
by your orators have sustained great
damage, detriment & injury - and your
orators further shew that said Marsh,
Capen, Lyon & Webb, Upham still continue
& threaten hereafter to continue to print
publish & expose to sale & sell copies
of the said piratical work, the protests,
exhortations & warnings of your
orators to them to the contrary notwithstanding.

all while actings, doings & pretences are contrary to equity & good conscience & tend to the wrong & injury of your Orators in the premises. - In Consideration whereof & inasmuch as your orators are remediless in the premises at law, & cannot have ^{adequate} relief save in a Court of equity, where matters of this & the like nature are properly cognizable & relievable and to the end that Said Marsh Chapman Lyon Webb & Upham may appear & answer all & singular the matters & things herein before set forth & complained of. particularly how many copies of Said piratical work -

they have sold. what number they have on hand. and that they be restrained by injunction issuing from this Court from selling or exposing to sale or causing or being in any way concerned in the selling or exposing to sale or otherwise disposing of any copies of said piratical work and that they be ordered & decreed to render an account of the copies of the same that they have sold & to pay over the profits of such sales to the plaintiffs, & that

they be ordered to Surrender & deliver
up the Copies on hand & the Stereotype
plates of said periodical work to an officer
of this Court to be ^{by} ~~destroyed~~ ^{cancelled} she ordered
to pay the pliffs their costs, & that
your orators may have such other
further relief as this Honorable Court
may seem meet or as equity may
require - ~~May it please this~~
~~Honorable~~ ^{Court} to grant to your orators
a writ of Subpoena directed to the
said Marsh. Capen, Legou & Webb &
Upham commanding them at a day
certain & under a certain penalty to be
therein inserted, personally to be and
appear before this Honorable Court then
& there to answer the premises & to stand
& abide such order & decree therein as to
this Honorable Court shall seem agreeable
to equity & good conscience

by their Solicitors
Phillips & Robins

42
Charles Folson Talbot
Pela Marsh & Co

Fill files: D. 10
Office Aug: 8. 1840.
and Subpoena issued
returnable at Sept.
Rules. 1840.

Chas. Stillman et al
Pela Marsh & Co

In Chancery
Charles Folsom & al
vs.

Bela Marsh & al.

To the Honorable the Justices of the
Circuit Court of the United States for the first circuit &
district of Massachusetts.

In pursuance of an order of this
Honorable Court made in the above cause and dated the twenty
first day of May A. D. 1841, I, the subscriber, Geo. S. Hillard,
one of the masters of this Court, hereby report as follows.

The work, of which the plaintiffs are
the proprietors, is comprised in twelve octavo volumes, ranging
in length from five hundred & forty to five hundred and ninety
two pages and containing in the whole six thousand seven
hundred and sixty three pages, including one hundred and fifty
eight pages of Index in the twelfth volume. The first volume
consists of an original life of Washington by Mr Sparks,
one of the plaintiffs, and the remaining eleven, of the writings
and correspondence of Washington, with editorial notes and
illustrations by Mr Sparks.

The work of which the defendants are
the proprietors is in two volumes duodecimo. The first volume consists
of Four Hundred and Forty three pages, including forty one pages
of glossary and index. The second volume consists of four hundred
and twenty three pages, including thirty five pages of glossary &
index. The whole amount of the pages of the two volumes is
therefore Eight Hundred and sixty six, including twenty six pages
of glossary and index.

I proceed to report the coincidences of the first volume
of the defendants work with that of the plaintiffs, and how far
the said first volume is identical with that of the plaintiffs.

In the first place I report the number of pages in the first
volume of the defendants work which are taken from &
identical with, the work of the plaintiffs and which
never appeared in print until the publication of the plaintiff
said work.

The following is a tabular view of the said pages,
the places where they are to be found in the first volume of
the defendants work, and the number of pages they
occupy therein.

On Page 23

is a page of

1 pages

" 36	"	$\frac{2}{3}$	"
" 56 to 58	"	$1\frac{3}{4}$	"
" 59	"	$\frac{1}{2}$	"
" 60	"	$\frac{1}{4}$	"
" 62	"	$\frac{1}{2}$	"
" 65 to 67	"	$1\frac{3}{4}$	"
" 71 to 72	"	1	"
" 72 to 73	"	1	"
" 74 to 75	"	1	"
" 76	"	$\frac{2}{3}$	"
" 77 to 80	"	$2\frac{1}{2}$	"
" 94 to 107	"	$12\frac{1}{2}$	"
" 111 to 116	"	$5\frac{1}{2}$	"
" 123 to 125	"	2	"
" 133 to 134	"	1	"
" 138 to 139	"	1	"
" 168 to 169	"	$1\frac{1}{2}$	"
" 181	"	$\frac{2}{3}$	"
" 205 to 206	"	1	"
" 216 to 217	"	1	"
" 227	"	$\frac{1}{2}$	"
" 229 to 232	"	2	"
" 243 to 249	"	6	"
" 252	"	$\frac{1}{2}$	"
" 255	"	$\frac{2}{3}$	"
" 263 to 264	"	1	"
" 265 to 267	"	2	"
" 273 to 274	"	$\frac{2}{3}$	"
" 275 to 279	"	3	"
" 281 to 288	"	8	"
" 295	"	1	"
" 300 to 304	"	$4\frac{1}{2}$	"
" 305 to 306	"	$1\frac{1}{2}$	"
" 308	"	$\frac{3}{4}$	"
" 317 to 319	"	$2\frac{3}{4}$	"
" 331 to 332	"	1	"
" 339 to 342	"	$2\frac{1}{4}$	"
" 342	"	$\frac{1}{2}$	"
" 344 to 353	"	$8\frac{1}{4}$	"
" 354 to 362	"	$8\frac{1}{4}$	"
" 363 to 368	"	$5\frac{1}{2}$	"

Amount brought up from former page		98 $\frac{1}{3}$ pages
Page 369 to 373	is a page of	4
" 373 $\frac{1}{2}$ 374	"	$\frac{1}{2}$
" 374 to 385	"	10
" 387 to 389	"	1 $\frac{1}{4}$
" 389 to 390	"	1
" 392 to 396	"	4
" 398 to 402	"	5
		<hr/> 124 $\frac{1}{2}$

To the above list are to be added 5 $\frac{3}{4}$ pages, accidentally omitted and mentioned below in the paragraph marked #

5 $\frac{3}{4}$

129 $\frac{5}{6}$

In the above list, the page on page 138 to 139 has appeared in the American Archives 4th series vol. 2^d p. 1764, which was published in 1839, subsequently to the publication of the plaintiff's work, but prior to that of the defendants. Also the pages on pages 339 to 342, 358 to 362, 367 to 368, 392 to 396, amounting in all to eleven pages are found in the "Memoirs, correspondence & manuscripts of General Lafayette", a work published in New York in 1837 subsequently to the publication of the plaintiff's work, but prior to that of the defendants. This work is protected by copyright which is transferred to the family of Gen. Lafayette. The letter contained in Upham pp. 339 to 342, has in the "Memoirs" &c the following note by the editors "We believe this letter never reached M. de Lafayette" In the "Memoirs &c" there is a postscript of three lines, which is found in Upham but which is not in the work of the plaintiffs.

To the preceding list should be added a page and a half on pp. 289, 290 of the defendants' work, and a page of one page on pp. 327, 328, and a page of two pages ~~and~~ ~~correspondence~~ on pp. 329, 330 and a page of a page & a quarter on pp. 335 to 337, all of which are found in the "Memoirs &c" of Lafayette above mentioned. In all, five pages and three quarters.

I now proceed to report the passages in the first volume of the defendant's work which are found in the plaintiff's work but which are also to be found in other works published before the plaintiff's work.

The plaintiffs maintain that there are substantial differences between these passages as contained in the work of the plaintiffs and in the other works, offered in evidence by the defendants.

The defendants maintain that these differences are not substantial. They also maintain that the plaintiffs have not and cannot have any copyright in these passages, the same being ~~also~~ found in the last eleven volumes only of the plaintiff's work.

I proceed to specify these differences by a comparison of the separate passages.

On page 178 of the defendant's work is a passage occupying nearly a page which is found in the plaintiff's work vol. IV p. 60. The same passage is found in Allen's American Revolution vol. I. page 452, but with certain differences here specified.

Upham & Sparks			Allen
line 3 ^d	(in Upham)	"will depend"	"depend"
" 10 th	"	"Charlestown"	"Charleston"
" 12 th	"	"hiredlings"	"these hiredlings"
" 13 th	"	"skulk lie down"	"lie down, skulk"
" 16 th	"	"shot down"	"shot"
" "	"	"no such"	"no such scoundrel"
" 17 th	"	"that every one"	"every one"

The punctuation in Allen differs from that in Upham and Sparks.

On page 290 to 291 of the defendant's work is a passage, occupying one page, which is found in the plaintiff's work vol. V p. 238. Of this passage, eight lines are found in Gordon's American Revolution vol. III p. 62. Of these eight lines, the last two are not in Upham nor in Sparks. There is a line & a half in Upham, between the first and second sentences of Gordon, which is not in Gordon. In the second sentence Upham varies from Gordon in putting "been" before "this" & in using "suffering" for "sufferings". Also one paragraph of this passage, being about one half, is found in Peckin's United States vol. II p. 162, with the following differences

Upham and Sparks.

9th line "prospects before us with respect to futurity"

11th " "of it" inserted

18th " "suffering"

" "general mutiny"

21st but the most active efforts everywhere" inserted

There remains one half page which appeared for the first time in the work of the plaintiffs

Pitkin

"prospect for the future"

omitted

"sufferings"

"mutiny"

omitted

On page 327 of the defendants work is a passage, occupying about one third of a page, found in the plaintiffs work vol VI p. 36, which is found in Gordon's American Revolution vol III p. 170, and corresponds with it, except that in line 5th Upham and Sparks have "the offending party" and Gordon has "what was the offending party" And on pp. 327 & 328 is a passage of one page, found in the plaintiffs work, vol VI p. 47 and which is also contained in Marshall's Life of Washington vol. III [Ed. 1804] p. 578, with the following differences

Upham & Sparks

2^d line "that"

5th " "what"

5th " "esteem"

8th " "are"

10th " "upon"

13th " "officer" put after "American"

14th " "depend"

15th " "to" inserted

17th " "upon their arrival there" inserted

18th " "has"

19th " "the"

20th " "coming" inserted

20th " "light"

22^d " "as"

24th "The latter part of which is certainly very impolitic, especially, considering"

26th "The Congress"

28th "the world, knowing our differences"

These two passages from Marshall is one of those heretofore mentioned as being one of those contained in "Memoirs &c of Lafayette"

Marshall

"which"

"which"

"deem"

"be"

"on"

put after "French"

"be assured"

"to" omitted

omitted

"shall have"

"this"

omitted

"way"

"since"

"upon"

~~omitted~~

"Congress"

"our differences being known to the world"

On page 353 to 354 of the first volume of the defendant's work is a passage of about a page, found in the plaintiff's work vol. II pp 297. 298, which is found in Almon's Remembrances vol. VIII p. 367. Upham & Sparks agree precisely and both differ in some respects from Almon. The passage consists of two short letters of Gen. Washington. In Almon the first one is dated thus "Head quarters, New Windsor, July 16, 1779, half after nine o'clock, A.M." In Upham and Sparks the date is "New Windsor half past ~~two~~⁹ o'clock 16 July 1779". In Almon the second letter is dated "Head quarters, New Windsor, July 21, 1779". In Upham and Sparks it is dated "New Windsor, 20 July 1779". In the first line of the first letter Upham & Sparks have the word "to" where it is omitted in Almon. There are also one or two slight variations in point of spelling

On page 368 of the first volume of the defendant's work is a short passage of nine lines found in the plaintiff's work vol. VII p 31. This is also found in Almon's Remembrances vol X p. 197, with the following differences

Upham & Sparks	Almon
"Morristown 13 May"	"Head quarters, Morris-town May 13"
"Sir" prefixed.	omitted -
"to you this letter" line 2 ^d	"you this"
"distinguished himself in the service of his country so signally distinguished himself."	"distinguished himself in the service of this country so signally"

On page 373 of the first volume of the defendant's work is a passage of a little more than a page, found in the work of the plaintiff vol VII p 85. A part of this passage is found in Almon's Remembrances vol. X. p 239. 240, with the following differences

Upham & Sparks	Almon
Direction "To the President of Congress"	no address
"Head quarters"	omitted -
"25 June"	"June 25"
4 th line "to our intelligence" inserted	omitted -
6 th "two brigades"	"two brigades, & the horse"
8 th "they"	"it -"
13 th "Major Generals"	"Major General"
14 th "but, with their superiority of numbers they of course gained Springfield, burnt the village & retired"	"but with their superiority in numbers they of course gained Springfield. Having burnt the village, they retired"

13th line "Dickinson"

"Dickenson"

There are twenty two lines which are in Upham & also in Sparks, not found in Almon.

On page 385 of the first volume of the defendant's work is a passage of about a page, found in the plaintiff's work vol. VII p. 216, which is also to be found in the memoirs of General Heach pp. 253 to 255, with the following differences

Upham & Sparks	Heach
"26 September"	"Sept. 26"
"head quarters" line 3 ^d	"head quarters yourself"
12 th line "major general"	"maj. gen."
15 th "of our army, of the garrison"	"of the army of the garrison"
20 th "those"	"these"
22 ^d "kept it a secret"	"kept it to himself"
23 ^d "under the pretence of"	"under pretexts of"
27 ^d "of Major Andre's captivity,"	"of Mr. Andre's capture."
"measures were &c"	"measures were &c"
28 th "General Arnold"	"him"
39 th "measures"	"measure"
signed "I am, dear Sir, with very great esteem & regard, yours" &c	signed "G. Washington" merely

On page 386 of the first volume of the ~~complainant's~~ defendant's work, is a passage of little more than a page, found in the plaintiff's work vol. VII p. 218, nearly all of which is found in the Annual Register for 1780 p. 384, with the following differences

Upham & Sparks	Annual Register
1 st line date "Highlands 26 September"	"High Lands Sept 29"
" " "Congress"	"the congress"
3 th "as it was"	"and, as it was"
11 th "a John Anderson"	"John Anderson"
16 th "of the British"	"to the British"
18 th "From the several"	"From these several"
22 th "I accordingly"	"accordingly"
25 th "bulture, sloop of war"	"bulture, ship of war"
27 th "after he got on board, he"	"He wrote me a letter, after"
"wrote to me a letter, of which the enclosed is a copy"	"he got on board"

Upham & Sparks
 29 line "is not"
 31 .. "proper precautions"
 36 .. to have consisted only
 of militia"
 37 .. "manner"

Annual Register
 "was not"
 "precautions"
 "it consisted only of a
 few militia"
 "manner on the occasion"

There are also about twelve lines in Sparks & Upham which are not found in the Annual Register. The same passage is also contained in the 11th vol. of Almon's Remembrancer page 1 & 2, corresponding precisely with the Annual Register.

On page 389 of the first volume of the defendants work is a passage of about one page & a half, found in the work of the plaintiffs vol. VII p. 235, a small portion of which is found in Almon's Remembrancer vol 11 p. 2, with the following differences

Upham & Sparks
 7 October
 1 line "to enclose to Congress"
 3 .. "Case"
 6 "opinion of the board"
 21 .. "Besides these"
 41 .. "Isaac van Wart"

Almon
 Oct. 7
 "inclose Congress"
 "Cause"
 "Sentence of the Board"
 "Besides this"
 "Isaac vanwert"

In the passage as found in Upham there are forty three lines (also in Sparks), being about one page, which are not found in Almon.

On page 390 of the first volume of the defendants work is a passage of about two thirds of a page, found in the work of the plaintiffs vol VII p 256 which is also found in Thatcher's Military Journal p. 227 with the following differences

Upham & Sparks
 4 line "from Arnold's perfidious treachery"
 5 .. ~~from~~ "he"
 10 .. "an"
 14 .. "Arnold's treachery"
 17 .. "not to know"
 18 .. "got"

Thatcher
 omitted)
 "Arnold"
 "and"
 "Arnold's intention"
 "not to have known"
 "gotten"
 "if Arnold is suffering at this time"
 "hacked in crime"
 "so lost"

21 "if at this time Arnold is undergoing"
 25 "hacked in villainy"
 25 "and so lost"

26 "will enable"

still enable

Parts of the above passage are also to be found in Gordon's
Am. Rev. vol. III p. 140, and Bancroft's Life of Washington
p. 260. These correspond with Thacher as above shown—

I now proceed to an examination of the second volume of the defendant's work, and following the same course as with the first volume, I repeat the following tabular view of the passages in this volume of the defendant's work which are taken from, and identical with, the work of the plaintiff and which never appeared in print until the publication of the plaintiff's said work, with the places where they are to be found in the said second volume of the defendant's work, and the number of pages they occupy therein.

On Page 15 to 21	is a passage of	4½ pages
" 21 to 31	"	9 "
" 35 to 53	"	18 "
" 54 to 58	"	4 "
" 61 to 64	"	3 "
" 73 to 74	"	1 "
" 76 to 86	"	9½ "
" 92 to 95	"	3 "
" 97 to 100	"	2 "
" 104 to 105	"	½ "
" 120 to 130	"	9 "
" 134 to 135	"	1 "
" 139 to 155	"	14½ "
" 157 to 158	"	1½ "
" 173	"	1 "
" 176 to 177	"	½ "
" 179 to 181	"	2 "
" 182 to 184	"	3½ "
" 185 to 186	"	½ "
" 189 to 194	"	5 "
" 199 to 203	"	4 "
" 205 to 223	"	18½ "
" 225 to 229	"	4 "
" 229	"	¾ "
" 230 to 232	"	1½ "
" 233 to 236	"	3 "
" 237 to 238	"	1 "
" 243 to 247	"	4 "
" 249 to 250	"	1 "
" 253 to 257	"	4 "
" 260 to 272	"	11 "
" 272 to 273 to 274	"	½ "
" 276 to 281	"	5½ "
" 283 to 292	"	8 "
" 329 to 367	"	29 "
		<hr/> 190½

I now proceed to report two passages in the second volume of the defendant's work which are found in the work of the plaintiffs, and which are also to be found in other works published before that of the plaintiffs, with differences more or less striking, which the plaintiffs contend are substantial differences, which is denied by the defendant.

On page 21 there is a short passage of about twelve lines (found in Sparks vol. VII b. 7) which is found in Gordon's American Revolution vol. IV p. 67, with the following differences

~~Sparks~~ Upham's Sparks

"We are at this hour suspended in the balance; not from choice, but from hard and absolute necessity; and you may rely upon it as a fact, that we cannot transport" &c
six lines

"But why need I run into detail, when it may be declared in a word, that we are at the end of our tether, & that now or never our deliverance must come"

Gordon

"We are at this hour suspended
"in the balance: we cannot
"transport &c"

omitted

"in a word, we are at the end
"of our tether, and now or never
"our deliverance must come"

On page 53 is a page of one half page, found in Sparks vol VIII p 174, which is also found in Johnson's Life of Greene vol II p 240, with the following differences

Upham & Sparks	Johnson
line 5 person "pursuer"	"person"
" 7 "I feel with the highest degree of pleasure"	"I feel in the highest"
" 12 "never can be"	"never can"
" 17 "service"	"services"
" " (these)"	"those"
" 19 "tells me that I acted"	"tells me I acted"

On pages 58 & 59 is a page of about a page & a half, found in Sparks vol VIII p 182, found also in a work called "Epistles domestic, confidential and official from Gen. Washington" pp 187 to 190, with the following differences

Upham & Sparks	Epistles &c
line 17 "enclose"	"enclose"
" 19 "I herewith transmit"	"is herewith transmitted"
" 22 "feelings"	"the feelings"
" 25 "operation"	"operations"
" 27 "emulating spirit"	"imitating spirit"
" 35 "it was"	"it was"
" 38 "have been"	"has been"
" 40 "has subsisted"	"have subsisted"
" 46 "the departments"	"of departments"
" 47 & 53 "Colonel"	"Col"
" 64 "esteem"	"respect & esteem"

The same page is also found in Almon's Remembrance vol XIII p 60, corresponding with the "Epistles &c" except in two places where it conforms to Upham

On pages 61 to 64, is a letter from Washington occupying a little over three pages, of which the first paragraph, consisting of nine lines, and the last period consisting of five lines are found in the "Epistles &c" p. 199. These two extracts, there purport to be the whole letter. The whole letter is found in Sparks vol. VIII p 189. There are in these fourteen lines so many variations, that (for this reason and the fact that it is given in that work

as one letter whereas in Upham & Sparks it is the beginning & end of a long letter) I report that these fourteen lines must have been copied from the plaintiffs, as well as the rest of the letter.

Pages 68 to 70 of Upham (vol 2^d) are occupied by a circular letter of Washington to the several states (Sparks vol VIII p. 226) which is found in New Hampshire Hist. Soc. collections vol II p. 187, with the following differences

Upham & Sparks		N.H. Hist. Coll.	
p. 68 line 13.	"assistance"		"assistances"
" " " "	"was... it."		"were... they"
p. 69 " 8	"a part"		"part"
" " 38	"has"		"have"
p. 70 " 12	"held out"		"held"
" " 18	"these sentiments"		"these, my sentiments"
" " 24	"I have the honor to be" &c		"I have the honor to be with the greatest respect, your excellency's most obedient & humble servant"

Pages 70 to the bottom of page 72 of Upham (vol. 2^d) are occupied by a similar circular letter of Washington to the several states (Sparks vol VIII p. 232) found also in New Hampshire Hist. Soc. collections vol II p. 191, with the following differences

Upham & Sparks		N.H. Hist. Coll.	
p. 70 line 27	"at this advanced" &c		
p. 70 line 36	"& happiness"		"and the happiness"
" " 37	"connected with"		"concerned in"
" " 39	"the"		"those"
" 71 " 1	"the broken" &c		;- "that the broken" &c
" " 4	"unless we"		"that unless we"
" " 12	"although we"		"that - although"
" " 13	"nor"		"or"
" " 19	"this"		"that this"
" " 22	"as the present"		omitted
" " 24	"that it is"		"it is"
" " 26	"however"		"that however"
" " 30	"seems"		"seem"
" " 31	"it is"		"that it is"

Upham & Sparks

p. 72 line 6 "arrive & we might"
 " 8 "inspiring"
 " 10 "impelling"
 " 11 "persuading"
 " 13 "that only"
 " 25 "all the casualties"
 " 35 "fill"
 " 38 "to attempt"

N.H. Hist. Coll.

"arrive, soon might we"
 "inspire"
 "(impel)"
 "persuade"
 "only"
 "the casualties"
 "supply"
 "by attempting"

On page 75 of Upham (vol. II) is a passage of little more than half a page (Sparks vol. VIII p. 264) which is also found in the "Epistles &c" p. 206, with the following differences

Upham & Sparks

21 April (date)
 line 1 "enclosed"
 " 3 "facts"
 " 5 "unprecedented & inhuman"
 " 7 "I believe it to be altogether unnecessary"
 " 10 "Sippenkot"
 " 16 "eyes of God"

Epistles &c

April 21st
 "enclosed"
 "fact"
 "Cruel & unprecedented"
 "I conceive it altogether unnecessary"
 "Sippenkot"
 "eye of God"

On page 86 of Upham (vol. 2^d) is a passage of about a ~~whole~~ page and a half (Sparks vol. VIII p. 549) which is found in the Annual Register for 1783, p. 242, with the following differences

Upham & Sparks

line 12 "enclose"
 " 13 "Lady Asgill has just written me"
 " 17 "avenge"
 " 19 "Upon the King & Queen"
 " 20 "induces"
 " 22 "I felt"
 " 31 "on"
 " 41 "those unfortunate"
 " 43 "secure"

Annual Register -

"enclose -"
 "Mrs. Asgill has just wrote to me."
 "revenge"
 "upon the king and upon the queen"
 "induce"
 "I feel"
 "upon"
 "these unfortunate"
 "seek"

On page 97 of Upham (vol. 2^d), is a passage of about three quarters of a page (found in Sparks, vol VIII p 392) found also in Almon's Remembrance vol 16, p 23 with the following variations

Upham & Sparks

date "12 March"

line 5 "enclosed."

" 8 "enclosed"

" 12 "order:"

" 17 "had"

" 23 "P. S."

" 24 "enclosed"

Almon

"March 12th"

"enclosed, marked No. 1"

"enclosed and marked No. 11"

"order, no 111 and"

"has"

"N. B."

"enclosed No. IV"

Pages 106 to 108, two in number, in Upham are occupied by a passage (Sparks, vol VIII p 567), being a general order of Gen. Washington on the cessation of hostilities. These general orders are also found in various other works, the "Epistles, &c." in Washington's Political Legacies, in the Memoirs of Gen. Heath, in Almon's Remembrance, and also in Thacher's Military Journal pp. 332-334. I select Thacher for comparison as the differences in him are less numerous than in the others. The following are the differences, between the passage in Upham and Sparks, and in Thacher

Upham & Sparks

line 4 "at twelve"

" 12 "although"

p 107 " 2 "happy day, which is"

" " 21 "prospect"

" 108 " 10 "has crowned"

" " 16 "stores"

" " 16 "as soon"

Thacher

"at twelve o'clock"

"Though"

"happy day - a day which"

"prospects"

"have crowned"

"stores &c"

"so soon"

On page 121 to 124 of Upham (vol. 2^d) is a letter of Washington to Lafayette (Sparks, vol IX. p 17), occupying two pages and a quarter, the first paragraph of which, consisting of about half a page, is found in Bancroft's Life of Washington pp 328-329, with the following differences

Upham & Sparks
 line 1 "am become"
 " 3 "my own fig. tree"
 " 9 "this globe"
 " 14 "but I am"
 " 16 "a heartfelt"
 " 18 "move gently down"

Bancroft
 "have become"
 "own fig. tree"
 "the globe"
 "but am"
 "heart felt"
 "move down"

On page 124 of Upham (vol. 2^d) is a letter of Washington to Gen. Knox, (Sparks vol IX p. 21) the first two paragraphs of which, being about half a page, are found in Bancroft's Life of Washington p. 329 with the following differences

Upham & Sparks
 line 1 "that case"
 " 4 "till lately"
 " 6 "I waked"
 " 9 "nor had"

Bancroft
 "the case"
 "untill lately"
 "I awoke"
 "or had"

Pages 140 to 141 of Upham (vol 2^d) are occupied by portions of a letter from Washington to Jay (Sparks vol IX p. 187) which is found, with greater or less variations, in Life of Jay vol. I pp. 247 to 249, Pickens United States vol. 2^d p. 217, & Marshall's Washington vol V. p. 94. I select Marshall for comparison, as he varies least from Upham

Upham & Sparks
 line 8 "a coercive power"
 " 10 "having lodged somewhere"

Marshall
 "Coercive power"
 "lodging somewhere"

On pp. 184. 185. 186 of Upham are found some extracts, about a page and a half in all, from a letter of Washington to David Stuart (Sparks vol. IX p. 99) which are also to be found in Bancroft's Washington pp. 379. 380 with the following differences

Upham & Sparks
 p. 185 line 1. "The former"
 " 3. "an introduction & blazoning"

Bancroft
 "The first"
 "an introduction"

p 185 line 39 "if I were to give indulgence
to my inclinations"
"line 40 "fatigue"
" 186 line 1 "it is"
" " 6 "observing"
" " 8 "sociable"
" " 17 "more than probably"

"were I to indulge my inclinations"

"fatigues"

"they are"

"maintaining"

"familiar & sociable"

"it is more than probable"

Pages 229 to 231 of Upham (vol. 2^d) are occupied by
a letter of Washington to Ed Randolph (Spark, vol X p. 445)
a part of which (about a page) is found in Pitkin's Civil
& Political History vol. 2^d p. 448, with the following differences,
Upham & Spark, Pitkin

p 229 line 32 "which are"

"that are"

" 33 "was foreseen"

"were presented"

" there is none in some of
them and gross"

"there are none in some
of them, gross"

" 230 " 1 "for it, the"

"for the"

" 2 "upon me"

"upon my character"

" 3 "at the effect"

"on account of the effect"

" 4 "whilst"

"while"

" 12 "it is to be feared will"

"it is feared it will"

" 13 "or her from"

"from her"

" 14 "trade"

"commerce"

" 15 "hinder"

"prevent"

" "benefitted thereby"

"benefitted"

" 20 "pretendedly"

"particularly"

" 23 "never, since I have been in the
administration of the government, seen"

"never seen a crisis"

" 26 "with"

"of"

On pp. 232. 233 of Upham (vol. 2) is a passage
of about a page, from a letter of Washington to Ed. Randolph,
(Spark, vol. X. p. 449) found in Pitkin vol 2 p. 448, with
the following differences

Upham & Spark,

Pitkin

p 232 line 11 "present crisis"

"crisis"

" 12 "there is"

"for there is"

" 14 "Thus I have lately understood to be the
case in the quarter from men who are of no
party but well disposed to the present administration"

"The from men who are of no party but well disposed
to the government, & have lately learned
is the case"

Upham & Sparks

- p. 232 line 18 "could impress on the minds
of the people the most"
"line 23" "to have had more weight
with them than"
"24" "to have been"
"26" "that the treaty is made
with the design"
"27" "of our treaty"
"37" "from hence"
"38" "that I am"
"233" "2" "showed"
"straight course"

Pickin

- "would impress the people's
minds with the"
"to have more weight, than"
"has been"
"that this treaty is made
with a design"
"of a treaty"
"from this"
"that I am or shall be"
"shall"
"straight course in these things"

Pages 247. 248 of Upham, vol. 2, are
occupied by a letter of Washington to Jay (Sparks vol. XI. p.
173), being about a page, which is found in the Life
of Jay vol. I. p. 394, with the following differences

- Upham & Sparks
p. 247 "Sir"
"line 18" "that I can have but very
little time for private letter writing"
"line 22" "a few"
"33" "permit"
"28" "these"
"39" "in furnishing"
"248" "1" "all our embarrassments"
"8" "over me"
"10" "stay here"
"12" "friendship & confidence"
"15" "which I"
"16" "and might"
"18" "to obviate a misapplication
of votes"

- Jay
"My dear Sir"
"I can have very little time
for private letters"
"a few of them"
"allow"
"the"
"do to furnish"
"our embarrassments"
"upon me"
"remain here"
"friendly confidence"
"as I"
"as might"
"to obviate waste or
misapplied votes"

Pages 248 to 249 (about a page) in Upham, vol. 2,
are occupied by a letter of Washington to the Emperor of Germany
(Sparks vol. XI. p. 125) found also in Bancroft's Life of Washington
p. 463, with the following differences

Upham & Sparks
 line 11 "de Lafayette"
 " 15 "which they experience"
 " 20 "states"

Bancroft
 "La Fayette"
 "they experience"
 "state"

Pages 251 & 252 of Upham (vol. 2) are occupied by a letter of Washington to Jefferson (Sparks vol XI p. 137) which (excepting the first and last paragraphs and thirteen lines in the middle) is found in Bancroft's Washington p. 468 with the following differences. In Upham it occupies nearly two pages.

Upham & Sparks
 p. 251 line 9 "suspicion"
 " " 15 "and"
 " " 34 "under a"
 " 252 " 1 "invariably has"
 " " 3 "insincerity"
 " " 8 "of the opinions of the person"
 " " 12 "and the first with"
 " " 14 "until within the"
 " " 16 "length"

Bancroft
 "suspicion"
 "nor"
 "under"
 "has invariably"
 "sincerity"
 "of the person"
 "and that the first"
 "until the"
 "lengths"

Pages 272 to 273 (two pages and a half) of Upham (vol. 2) are occupied by a letter of Washington to Adams (Sparks vol XI p. 242) about one half of which is found in Bancroft's Washington p. 508, with the following differences.

Upham & Sparks
 p. 272 line 15 "such an event happening"

Bancroft
 "such an event"
 "either that"
 "her own citizens"
 "peace"

" " 16 "that that"

" " 22 "its own citizens"

" " "repose"

" " 24 "and the present from the prospect"

"from the prospect of the present"

" " 32 "good cause, which must be better known to the government than to private citizens, to expect &c"

good cause to expect &c, which must &c

" " 34 "might be"

"may be"

" " 37 "fairly bring it to believe"

"bring it to believe"

" 273 " 3 "such a uniform"

"such an uniform"

" " 4 "sense"

"determination"

Upham & Sparks

p. 273 line 8 "amongst"
 " " " 10 "a show"
 " " " 13 "without this"
 " " " 18 "only that I should add"
 " " " 19 "if imperious"
 " " " 20 "renounce"

Bancroft

"among"
 "the show"
 "without that"
 "only for me to add"
 "should imperious"
 "exchange"

Pages 274. 275 (about a page & a half) of Upham (vol. 2) are occupied by a letter of Washington to James Mc Henry (Sparks xi p. 246) nearly all of which is found in Bancroft's Washington pp. 510. 511, with the following differences.

p. 275 Upham & Sparks

" line 2 "tranquil walks"
 " " " "a boundless field"
 " " 3 "responsibility & trouble"
 " " 5 "principles"
 " " 8 "required"
 " " 10 "Contrary to"
 " " 12 "and laws"
 " " 14 "the government"
 " " 16 "In circumstances"
 " " 17 "our territorial rights"
 " " 18 "at any time for me"
 " " 30 "a public"
 " " 33 "secondly"
 " " 35 "the military force of it"
 " " 37 "Thirdly"

Bancroft

"tranquillity"
 "the boundless field"
 "responsibility"
 "principle"
 "when required"
 "in contempt of"
 "and of laws"
 "our government"
 "under circumstances"
 "our territory"
 "for me at any time"
 "the publick"
 "2dly"
 "its military force"
 "3dly"

Pages 281 to 283 of Upham (vol 2) about two pages, are occupied by a letter of Washington to Adams (Sparks vol. XI, p. 261) which is found in Bancroft's Washington p. 513 & Washington's Political Legacies p. 98. The variations in both of these works are the same, and I have selected the latter for comparison, as it contains the whole letter, while Bancroft omits a paragraph.

Upham & Sparks

p. 281 line 21 "hands"
 " " 34 "calculations"
 " 282 " 10 "acts"

Pol. Seq.

"hand"
 "calculation"
 "acts"

282	"with those which my"	"with those my"
"	line 29 "which has"	"who has"
"	" 34 "hold dear"	"hold dear & sacred"
"	" 37 "the reserve"	"this reserve"
283	" 1 "beg to be understood"	"beg it may be understood"
"	" 3 "may think"	"think"
"	" 6 "cannot receive"	can receive

begin here again

Recapitulation

I find the whole number of pages in the two volumes of the defendant's work, which correspond with the pages in the plaintiff's work and are identical with them, to be (discarding fractions) Three Hundred and fifty ~~five~~ three.

Of these pages, Three hundred and Nineteen have never appeared in print before the publication of the plaintiff's work, and I accordingly report them to have been copied by the defendant from the work of the plaintiff.

The remaining Thirty four pages have appeared before, in various other publications, with the variations hereinbefore stated. In view of these variations, and also in consideration of the fact that these pages in the defendant's work, generally speaking, differ in punctuation and other typographical peculiarities from the same pages as contained in works, other than that of the plaintiff, I find that these thirty nine pages were taken by the defendant from the plaintiff's work and none other.

The whole of these Three Hundred and fifty three pages in the two volumes of the defendant's work are taken from the last eleven volumes of the work of the plaintiff.

Of the three hundred and Nineteen pages, above mentioned, which are in the work of the defendant and which had not been published in any other work than that of the plaintiff, I report Sixty four pages to be official letters & documents and Two Hundred & fifty five pages to be private.

Of the remaining Thirty four pages I report fifteen pages to be private, and Nineteen pages to be official

Under the head of "official" letters, and papers I class the following

Letters addressed by Washington, as commander in chief, to the President of Congress.

Official letters to governors of states and speakers of legislative bodies

Circular letters.

General Orders

Communications (official) addressed as President to his cabinet.

Letter accepting the command of the army, on an expected war with France.

All others I class as "private".

The paper marked A, hereto annexed, is offered in evidence by the plaintiffs. It has been carefully compared by me with the original, and I hereby certify it to be a correct copy

The paper marked B, hereto annexed, is offered in evidence by the defendants. All of which is respectfully submitted

Geo. S. Hillard
Master in Chancery

Fees of the Master \$125.00

Fulham et al in Eg.

or
Marsh et al

Return the paper to you as
possible